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Situation of human rights in Cambodia

Note by the Secretary-General

The Secretary-General has the honour to submit to the General Assembly the report of his Special Representative for human rights in Cambodia, Peter Leuprecht,* pursuant to Assembly resolution A/56/169.

* Following the initial drafting of this report in July 2002, it had to be updated to include additional information.

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Report of the Special Representative of the Secretary-General for human rights in Cambodia

Executive summary

Cambodia has made important gains over the past 10 years, as evidenced by its beginning to rebuild State institutions and a legal framework. Economic opportunities are increasing as a result of recent stability. A space has been created, albeit limited, to enable human rights organizations and other civil society groups to play their role, and to engage in advocacy, education and training, as well as protection work. These are important developments that must be sustained.

Poverty and landlessness continue to exact costs, and contribute to a growing wealth gap between the richest segment of society and others. The adoption of the 2001 Land Law is welcome but there is a need for scrutiny of the imminent land titling process as the rise in land values risks being accompanied by land disputes and forced evictions. In rural areas, such evictions deprive people of the ability to use land as collateral, and deprive entire communities of a means to make a living. Where people have been forced off their land and into relocation settlements, the living conditions are often very poor, with inadequate water supplies, sanitation and other basic infrastructure.

Among the most pressing of Cambodia's needs is a properly functioning court system and judiciary. Implementation of existing laws is poor, the judiciary is weak and prone to corruption, and crimes committed by members of the security forces are often unaddressed. The human rights of individuals suffer first, but these factors are also the causes of deepening poverty, low levels of private investment and, ultimately, continued dependency on aid. Progress towards the establishment of a royal school for training judges and prosecutors appears to be going well and this could help. For now, however, Cambodia's courts are failing in their role as an effective balance against executive power. There is little respect for standards of fair trial, presumption of innocence is ignored, legal assistance is frequently not provided, judges often make arbitrary decisions without taking evidence into account, poor people are not treated equally before the law, and there is open interference from people in positions of power.

Several factors, all related to the slow pace of judicial reforms, are contributing to these problems. Restrictions on entry to the Bar Association are preventing development of the judiciary and depriving hundreds of qualified law graduates of the opportunity to practise. The resulting absence of legal representation is adversely affecting many provincial courts. Salary levels among judges are extremely low, increasing the risk of corruption. Appointees with known political affiliations are being placed in charge of key institutions, extending the control of the executive over the courts. Civil society, meanwhile, is given little say in the law-making process, and citizens often have poor knowledge of their rights. Police and civilians are, on occasion, apparently taking punishment into their own hands. There have been some 65 mob attacks since mid-1999 with an increase in such violence since December 2001. The Special Representative has furnished the authorities with information on these cases and urges a determined effort to halt such incidents and address their causes.

The high incidence of police and military involvement in election-related crime is a matter for concern. The 3 February 2002 commune council polls were an important political milestone for Cambodia, marking the first countrywide local elections in more than three decades; but their important achievements, in passing control over the local distribution of State resources to local communities, were overshadowed by the 19 murders, mostly of political activists. Investigation by human rights groups of intimidation and violence found that local officials, police and members of the armed forces were often involved, reflecting the wider problem of an absence of separation between the ruling party and State institutions. Cambodia's courts and law-enforcement agencies have a patchy record in bringing those responsible for these murders to account. Arrest warrants have not been delivered in cases where suspects are soldiers, defendants have been absent from trial, and a very questionable judgement has been passed in at least one instance, where suspects were members of the police.

In light of its shortcomings in dealing with violations of election laws, and in providing political parties with equitable media access, the Special Representative welcomes current moves to overhaul the National Election Committee. This body appears to have played a positive role in assuring generally good technical standards during the 1998 and 2002 polls, but it needs to strengthen its position as a credible, transparent and independent institution. The proper functioning of this body is essential if Cambodia is to make headway in establishing the level playing field necessary for a fair electoral process. As a general election is scheduled for 27 July 2003, the need for a substantial reform of this institution is urgent.

Since February 2001, hundreds of people belonging to ethnic minorities from Viet Nam's central highlands have arrived in Cambodia seeking asylum. The Cambodian Government initially agreed to allow these people to remain. However, in February and March of this year, under pressure from Viet Nam, the authorities began deporting groups of Montagnards with little or no attempt to determine individual claims to asylum. The sites provided for asylum-seekers have since been closed, making the situation for new arrivals more precarious. The Special Representative urges the Government of Cambodia to respect its obligations under the 1951 Convention relating to the Status of Refugees, particularly regarding the core principle of non-refoulement.

On 8 February 2002, the Office of Legal Affairs of the United Nations Secretariat announced the cessation of its negotiations with the Government of Cambodia on the establishment of a tribunal for crimes of the Khmer Rouge period. Opinion about this decision in Cambodia has been mixed. It is the Special Representative's view that Cambodia needs a means of establishing the truth and justice with respect to this tragic chapter in its history. Regrettably, the present alternatives to a United Nations-backed tribunal do not appear satisfactory.

A positive area is education, where efforts by the Ministry of Education, Youth and Sports in collaboration with international and domestic agencies are boosting enrolment. The main problems in this area stem from a lack of sufficient State resources. Slow or non-disbursal of funds allocated to education under the national budget causes significant problems. Teachers with adequate salaries charge unofficial daily fees. Classes are curtailed, so that teachers can take second jobs. A high dropout rate, particularly among girls and minority groups, is of concern. Facilities are very poor. About one out of every five districts has no secondary school.

Ratanakiri province has only one secondary school exists for the entire province. Facilities for educating disabled students are extremely poor. Cambodia's future lies in the proper education of its children, and they deserve more help.

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I. Introduction

1. The present report, prepared in June 2002, is submitted to the General Assembly in accordance with Assembly resolution 56/169 of 19 December 2001 and is based on the Special Representative's latest two visits to Cambodia, in March and June 2002, where he met government officials and representatives of the non-governmental organization, diplomatic and donor communities.

2. As set out in Commission on Human Rights resolution 1993/6 of 19 February 1993 on the situation of human rights in Cambodia,[1] the tasks of the Special Representative are: (a) to maintain contact with the Government and people of Cambodia; (b) to guide and coordinate the United Nations human rights presence in Cambodia; and (c) to assist the Government of Cambodia in the promotion and protection of human rights.

3. The Special Representative of the Secretary-General for human rights in Cambodia, Peter Leuprecht, has conducted six official missions to Cambodia since his appointment in August 2000. He has reported to the Commission on Human Rights (E/CN.4/2001/103 and E/CN.4/2002/118) and the General Assembly (A/56/209).

4. This report builds upon his previous reports. As far as possible, it avoids repetition, while noting that many of the problems highlighted in the reports of this and previous Special Representatives continue to afflict Cambodian society.

II. Fifth and sixth missions of the Special Representative of the Secretary-General for human rights in Cambodia

Fifth mission (5-11 March 2002)

5. The pressing need for judicial reform, and violence and intimidation related to the 3 February 2002 commune council polls, were the focus of this visit. Meetings were held with His Majesty, King Norodom Sihanouk; the Minister of Education, Tol Lah; the Secretary of State for the Office of the Council of Ministers, Sum Manit; the Minister of Justice, Neav Sithong; the Secretary of State at the Ministry of the Interior, Prum Sokha; the Permanent Secretary of the Inter-ministerial Committee for the Ethnic Minorities Development Programme, Seng Narong; and the Chairman and Board of the National Election Committee. The Special Representative also consulted with representatives of civil society organizations, political parties, and the diplomatic, donor and United Nations communities.

6. On 8 February 2002, the Office of Legal Affairs of the United Nations Secretariat announced that it was withdrawing from negotiations with the Government of Cambodia over the establishment of a Khmer Rouge tribunal. This visit had been the first by the Special Representative since that announcement. Consequently, the issue featured prominently in several of his meetings. The Special Representative sought to gauge feeling on the issue across as wide a range of society as possible and, as part of this process, visited once again the Tuol Sleng prison in Phnom Penh, a former school where prisoners of the Khmer Rouge had been held and tortured before their deaths. He met Cambodian film director Rithy Panh and,

together with several Cambodians who had lived through this era, watched a film by the director exploring the search for answers.

7. The continued serious shortage of lawyers was highlighted during discussions with concerned groups and individuals including human rights non-governmental organizations and members of the Working Group on the Shortage of Lawyers. Restrictions on entry into the Bar Association continue to significantly hamper development of Cambodia's judicial system. Corruption and executive or other external interference exerts a powerful influence in too many cases, and it is by no means certain that such manipulation is declining. The Minister of Justice and the Secretary of State for the Office of the Council of Ministers spoke of the difficulties in safeguarding the courts from such pressures. The Special Representative discussed these issues and expressed hope that badly needed reforms would occur, inter alia, at the Supreme Council of the Magistracy, and that a code of ethics for the judiciary would soon be developed and implemented.

8. Election-related violence surrounding the 3 February commune council polls claimed the lives of 19 people. Except for a two-year-old child and an election observer, all were political activists for the Front uni national pour un Combodge indépendant, neutre, pacifique et coopératif (FUNCINPEC) or the Sam Rainsy Party. Seventeen of these murders occurred prior to polling day. The Special Representative compiled three reports during the election period examining these and other problems that continue to harm the political environment. He discussed the findings of these reports — which show poor law enforcement and absence of neutrality on the part of State institutions — with government, United Nations, diplomatic and donor community representatives. He urged that those responsible be found and brought to justice.

9. The Special Representative was concerned about the forced repatriation to Viet Nam of Montagnard asylum-seekers, and issued a public statement during his visit calling on the Government to halt such deportations and respect its obligations under the 1951 Convention relating to the Status of Refugees,[2] including the principle of non-refoulement.

Sixth mission (3-10 June 2002)

10. Implementation of the right to education and growing problems of forced relocation of populations in urban areas and land grabbing in all areas were the focus of the sixth official mission. The Special Representative also assessed progress in combating impunity, a core problem reflected in the weakness of the judicial system and underlying many of Cambodia's ills, including electoral violence.

11. The Special Representative met His Majesty King Norodom Sihanouk; the Minister of Justice, Neav Sithong; the Secretary of State at the Ministry of the Interior, Prum Sokha; the Co-Minister of Defence, Tea Banh; the Minister of Education, Tol Lah; and the Minister of Land Management, Im Chhun Lim. He saw the Governor of Phnom Penh, Chea Sophara, prime ministerial adviser Om Yentieng, the President of the Supreme Court, Dith Munthy, and the General Prosecutor of the Court of Appeals, Henrot Raken. He also consulted with representatives of civil society, political parties, and the donor, United Nations and

diplomatic communities, and visited Kompong Cham province to familiarize himself with the problems of election-related crime and land disputes.

12. In 2001, families living in the Bassac and Deurm Cham squatter communities of Phnom Penh were forced out of their homes by fires and relocated without consultation. The Special Representative visited one relocated community at Anlung Krognam, and discussed with municipal and central authorities the particularly difficult living conditions there. He also visited squatter settlements in the Bassac and Preah Monivong areas of Phnom Penh.

13. The Special Representative visited a pilot school project in Kompong Cham, where fellowships are provided to girls and students are taught life skills, and met parents and teachers. He examined problems in access to education by girls, the poor, minorities, disabled and other marginalized groups, based on information gathered since his previous report and discussions started with the Government. He visited a school for disabled children and a non-formal education programme for about 3,000 out-of-school children in Phnom Penh. He was also told of persistent problems of unauthorized fees requested by teachers and principals. Many parents cannot afford such unofficial fees, resulting in high drop out rates. The current budget for education, although higher than in previous years, is insufficient and better wages for teachers are needed to address this problem.

14. The Special Representative examined progress in judicial reform and the work of the criminal and judicial authorities in bringing to justice those responsible for the killings during the commune elections. Partly in this context, the Special Representative visited Kompong Cham province, where he met military and local government leaders, the president and chief prosecutor of the Kompong Cham court, and non-governmental organization representatives. He discussed the detention of a FUNCINPEC land rights activist, Keo Van Tout, and travelled to Srolop and Ancheum communes in Tbong Khmum district meeting the families of murdered activists, Toun Phally and Phuong Sophat. He also met Horm Bun Ly, activist and victim of attempted murder, on 3 March 2002. Efforts to bring to justice those responsible for such crimes have generally been poor. The Special Representative is mindful that Cambodia is approaching a general election in 2003, where the stakes and risk of violence and intimidation will be higher. He has urged authorities to demonstrate clearly that the criminal and judicial systems can act without favour so that those responsible are identified and brought to justice.

15. The authorities are urged to ensure that the Royal Cambodian Armed Forces cooperate fully with law-enforcement authorities, especially in cases where soldiers are suspects. The Special Representative was told, while in Kompong Cham, that the provincial court faces continued obstacles in having arrest orders and summonses served against soldiers. He notes that former Special Representative Thomas Hammarberg was assured by the Prime Minister, in 1999, of a swift investigation into the detention, torture and disappearance of Tuy Teth, a Kompong Cham farmer. On 17 February 2000 a writ of capias was issued for a deputy commander of the Artillery Support Battalion in Tbong Khmum district. As of June 2002, this had still not been enforced.

16. The Special Representative issued a public report during his visit on street retribution. This report was prompted by some 65 mob attacks over the past three years and a more than threefold increase in such incidents between December 2001 and 31 May 2002, compared with the previous six months. In response to this report,

the Special Representative received assurance from the Secretary of State at the Ministry of the Interior, Prum Sokha, that the Government would act to deal with the problem. However, he is concerned by subsequent public statements by several senior police officials that police officers are not to be blamed. Regardless of who is to be blamed, the Special Representative urges all law-enforcement authorities, police included, to recognise their individual and collective responsibility to halt such acts. The Government is encouraged to consider establishing an independent board of inquiry to scrutinize mob killings, identify causes and make preventive recommendations.

III. Major developments and human rights issues of concern

A. Judicial reform

17. Cambodia's judicial system remains weak and highly prone to pressures including corruption, executive interference and influence peddling. Reform efforts are progressing slowly, or have stalled. Key appointees are in many cases individuals with strong political affiliations, reflecting a tendency for those in power to exert control over court decisions.

18. Energetic reforms are needed that will provide for a truly just and independent court system. Without a properly functioning judiciary, it will be extremely difficult for Cambodia to tackle its serious impunity problem and the multiple symptoms thereof. The Special Representative is aware of repeated government statements that judicial reform is a priority, but political will to translate these promises into action is in serious question, inter alia, among donors who, at a mid-June 2002 consultative group meeting in Phnom Penh, urged the Government to do significantly more.

19. Plans and institutions to tackle legal and judicial reform have multiplied. However, practical results seem to be inversely proportional to the growing number of plans and institutions. A certain cacophony appears to come out of government: too many cooks risk spoiling the broth. At the same time, there seems to be a tendency to marginalize the Ministry of Justice.

20. The Special Representative nonetheless welcomes recent positive developments including efforts by the Minister of Justice to reduce corruption within his Ministry. He also welcomes the fact that the Minister has kept his promise not to issue executive circulars to the judiciary.

21. The long-promised passing of the statute of judges should be a priority. This law needs to include measures to reduce opportunity for corruption. It should lay out the conditions of judicial service and establish a tenure system. The Special Representative has been assured that the law will be adopted by the Council of Ministers by October 2002.

22. Judges also need to be provided with adequate salaries. The Special Representative urges the Government to avoid writing into law provisions that might hinder future salary adjustments. Proper consultation with all concerned is needed in drafting such important laws.

23. The amendment to the Law on the Supreme Council of the Magistracy, and the law on organization and functioning of the adjudicate courts, should also be

expedited. Delays appear to be affecting several important laws, including the penal code, the criminal procedure code, the civil code and the civil procedure code. These should be expedited. There has been no progress with regard to the creation of the urgently needed juvenile justice system.

24. It is important that a separate and adequate budget for the justice sector be allocated and disbursed in a timely manner. This will ensure adequate salaries, and cover operational costs including building and maintenance of proper court facilities.

25. The Supreme Council of the Magistracy also requires structural reform. If this body is to play its intended role in ensuring judiciary independence, it, too, needs to be independent. Its members should not be affiliated to any political party, and a system of checks and balances is needed to prevent external interference. Article 15 of the Law on Political Parties, which allows judges and prosecutors to play active roles in political parties, needs to be amended.

26. The Special Representative believes hat one of the most significant ways of speeding judicial reform will be to encourage the entry of new lawyers, judges and prosecutors into the justice system. He welcomes the recent appointment of 31 new qualified judges and prosecutors, who have reportedly not been chosen by political affiliation.

27. The Special Representative remains very concerned about the shortage of lawyers. At present, Cambodia has fewer than 200 practising lawyers among its population of nearly 12 million. Although a sub-decree has been issued to set up a bar school, there has been little apparent progress by the Bar Association in implementing this. It is a matter of concern that the Bar Association maintains a restrictive interpretation of article 32 of the Law of the Bar, further limiting access for practising lawyers. This "closed shop" policy is detrimental to the rule of law and should end. The Law of the Bar may have to be amended and budgetary allocation for necessary reforms made from the State treasury.

28. Recent progress in implementing a sub-decree on setting up a Royal School for Training Judges and Prosecutors is welcome. This is an important institution. New judges and prosecutors need proper training, and a system of continuing legal education needs to be available for the current judiciary. It is important that this school to train independent judges and prosecutors be itself independent. Members of the Executive (the Council of Ministers) sit on the Board of Directors, and the school's entry process is discriminatory, with the Government able to nominate appointees without an entry exam. The provision of an automatic 10 per cent advantage for civil servants taking the entry examination is also discriminatory.

29. The need for improved professional standards is demonstrated by two cases, in the Phnom Penh Municipal Court, in June 2002. In one — the trial of a man accused of operating a sex trafficking ring to Macao, China — a 15-year-old victim who had testified against him was threatened with prosecution for violating immigration laws. In another case, courts ordered the arrest of under age Vietnamese girls rescued by a non-governmental organization from a Phnom Penh brothel. The girls were detained in prison on immigration charges. The brothel owner escaped shortly after her arrest.

30. Civil society needs to participate much more fully in judicial reform. The Government must be prepared to involve civil society in this process. It is important

that the public be provided with general legal knowledge. Citizens need to be aware of their rights within the Cambodian legal system and these rights need to be respected. It should be remembered that laws are put in place to protect the rights of citizens. Regrettably, some ministries are not showing commitment to this important principle in the law-drafting process.

31. Civil society involvement in the law-making process is at present negligible, with no regular transparency in the formulation of royal and sub-decrees. Nonetheless, a recent initiative by the National Assembly's Legislation Commission to hold a public hearing on the draft bill on election of the members of the National Assembly deserves positive recognition. A World Bank initiative to assist the Government in the legal and reform process is also welcome. Special attention needs to be given to the participation of civil society organizations in the process. It might be advisable to organize tripartite meetings on legal and judicial reform among government, donors and non-governmental organizations.

32. Finally, Cambodia should be commended for ratifying the Rome Statute of the International Criminal Court[3] and the Optional Protocol[4] to the Convention on the Rights of the Child[5] on the sale of children, child prostitution and child pornography.

B. Mob killings

33. As noted in paragraph 16 above, the Special Representative expressed his concern about the lack of protection from mob killings in a public report issued on 6 June 2002.

34. The Special Representative has noted that police often fail to stop such acts and, in several cases documented by the press and human rights groups, have been directly complicit. He also noted that Cambodia's courts fail to take up such cases. Of the 65 mob attacks reported in Cambodia's press since mid-1999, none has resulted in conviction and imprisonment.[6] Efforts by the authorities to tackle the problem appear confined to public statements that such killings should stop. The Special Representative believes that more action is needed, and that the need to make law enforcement work should be a top priority. Although more complex causes cannot be ruled out, an absence of faith in the judicial system among members of the public and police appears to be a significant factor.

35. The Special Representative has urged the Government of Cambodia to ensure that each mob killing is thoroughly investigated and that each case of non-action by police officers is thoroughly scrutinized, with disciplinary or criminal charges brought against individuals where evidence of negligence or other misconduct arises. Close monitoring of police actions in regard to mob violence is essential. Effective oversight would help to ensure that police are not above the law and that thoroughly documented police files are compiled and forwarded to the courts.

36. Although most mob attacks occur in urban areas, no one in Cambodia is immune. On 31 December 2001, two teenage children were murdered by a mob and another seriously hurt, after the parents of a bullied classmate accused them publicly, and falsely, of being thieves. Mobs targeted ethnic Vietnamese residents of Phnom Penh during the 1998 election, killing at least three and wounding others over rumours that the city's food and water supplies had been poisoned. On some

occasions, recorded in photos, police have handed individuals over to crowds who then kill. In most cases, the victims are merely suspects in petty crime.

37. The Special Representative has recommended that provisions of the Code of Conduct for Law Enforcement Officials[7] be made known to all members of the Cambodian Police Forces and enforced. Articles 2, 5, 6 and 8 of this instrument on the need to protect suspects from ill-treatment and the need for law enforcement officials to prevent violations of the law, are particularly relevant. Prosecutors need to reflect on their shortcomings and ask why police and mobs can break the law, why they are not prosecuted, and why legal processes are not pursued.

38. The Special Representative recognizes the difficulties in determining the full causes of mob violence. He has thus urged the Government to consider establishing an independent board of inquiry, or a body comprising responsible representatives from political parties, non-governmental organizations and religious organizations, to scrutinize such acts. This board should look closely at police and prosecutorial conduct and have powers to recommend criminal or disciplinary measures. It should examine why these attacks occur and recommend ways to prevent them.

C. Khmer Rouge tribunal

39. The Office of Legal Affairs of the United Nations Secretariat announced on 8 February 2002 that would no longer continue negotiations with the Government of Cambodia over the establishment of a Khmer Rouge tribunal. This decision provoked considerable disappointment in Cambodia and among donor Governments. Views differ over who should be blamed, but there is a consensus in most quarters that Cambodia still needs a means of finding answers with regard to this tragic period in its history.

40. This decision has left Cambodia with two main options for dealing with the crimes of the Khmer Rouge era. One is a non-United Nations tribunal involving a foreign judge or judges. The other option is a purely national tribunal. It is the view of the Special Representative that neither approach is desirable. A non-United Nations tribunal would be very much a second-best option. It is noteworthy that Governments that have expressed some willingness to support this idea also see it as such. A purely national tribunal would lack credibility because of the poor state of Cambodia's judiciary. It would be of little value in helping Cambodia come to terms with its past, and could further undermine faith in the justice system.

41. It is the Special Representative's impression that Cambodians of all backgrounds and generations wish to know the truth about what happened and want justice. It is difficult to fight impunity if the crimes of the Khmer Rouge are unpunished. This is not only a legal matter, but also a fundamentally ethical one. Cambodia's wounded and traumatized society needs healing and justice. It also needs to be treated with respect and a high degree of sensitivity. The trial of the Khmer Rouge leaders is an important step on the path of a salutary catharsis which would help the Cambodian people come to terms with their past. It is the view of the Special Representative that the United Nations should do what it can to assist in this process.

D. Election violence and intimidation

42. Cambodia held its first local elections in more than three decades on 3 February 2002, an important step towards decentralization of political power. These elections established commune councils, which have a say in the local allotment of State resources. This important achievement was overshadowed by violence and intimidation, particularly in the months preceding the polls. As mentioned in paragraph 8 above, 17 individuals were murdered before polling day and 2 others have been killed since then.

43. Intimidation varied from area to area but was severe at around the time of candidate and voter registration, and in the 12 weeks immediately prior to polling day. The worst-affected regions were western border areas, the southern province of Kampot, and Kompong Cham province, which also saw the highest murder rate. In the Tbong Khmum district of Kompong Cham, armed gangs terrorized villagers, particularly activists for FUNCINPEC, the party that had won most votes in this area at the general elections in 1998 and 1993. Here, as in most parts of the country, the ruling Cambodian People's Party won the most votes, securing commune chief positions in 98.6 per cent of the nation's 1,621 councils.

44. Despite the severity of the problems in these areas, the overall level of violence was lower than at the general election in 1998, and the results were accepted without serious conflict. In these senses, the 2002 election marked important progress compared with 1998 and 1993. However, regressive tendencies need to be contained to ensure healthy political pluralism. Chief among these is the absence of proper neutrality on the part of individuals and institutions closely involved with law enforcement. The Special Representative has furnished the Government with information about crimes and other intimidation involving members of the security forces and local officials. He urges the Government to thoroughly examine all such evidence and to take steps to address this problem.

45. He has also pointed out that the National Election Committee (NEC), charged with overseeing the fair conduct of elections, had failed during the 2002 polls in investigating violations of and enforcing the election law. In addition, NEC impeded equitable access of political parties to radio and television, then denied its responsibilities in this area. The Special Representative was disappointed to be told by the head of NEC, in March 2002, that such access had been denied because of a risk that political discourse on television or radio might provoke fighting. Freedom of expression, and the requirement for voters to be informed, should not be so glibly dismissed. It is hoped that current efforts to reform NEC will result in important improvements. NEC has done good work in ensuring generally high technical standards for elections. It should do similarly good work in more politically sensitive areas. The post-election violence in 1998 should be a salutary reminder of the need to guard against such conflict. An independent, neutral and transparent NEC could fulfil this valuable role.

46. In contrast with the elections in 1993 and 1998, the authorities responsible for enforcing criminal laws have shown a welcome willingness to investigate some murders, and to arrest and bring culprits to court. Sadly, this has done little to improve justice for the families of victims. As of 31 May 2002, the Special Representative was aware of convictions in just 6 of the 19 election-related deaths.

The handling of several of these cases was clearly flawed, with claims of beatings to extract confessions, and the absence of prime suspects from trial.

47. In the highest profile case — the 14 November 2001 gang murders of Sam Rainsy Party and FUNCINPEC activists Phuong Sophat and Toun Phally — serious irregularities were found. Of five people on trial, two defendants with connections to the military failed to turn up and two police were acquitted despite one's being identified in court as the killer. A civilian was imprisoned. The Special Representative noted, with concern, press reports in June 2002 quoting officials as saying that promotion papers were being prepared for the two policemen.[6] Such opportunities to uphold the law and for the criminal and judicial systems to demonstrate that election criminality is not tolerated should not be squandered. Ending impunity must be a priority.

48. Looking forward to next year's general elections, all those concerned should build on the positive aspects of the commune council elections and prevent reoccurrence of the negative phenomena that overshadowed them.

E. Montagnard asylum-seekers from Viet Nam

49. About 1,500 people from different ethnic minority groups in Viet Nam's central highlands have crossed into Cambodia since February 2001. This outflow followed intervention by Vietnamese security forces to halt protests by local people for autonomy, return of ancestral lands and religious freedom. The majority of asylum-seekers arrived in the north-eastern provinces of Ratanakiri and Mondulkiri, where many initially received shelter in two sites run by the Office of the United Nations High Commissioner for Refugees (UNHCR).

50. On 31 March 2002, Prime Minister Hun Sen announced that these sites would be closed and newcomers would no longer be accepted. He also agreed to a resettlement offer from the United States of America for the remaining 900 refugees. The asylum-seekers were moved to Phnom Penh and transported to the United States, beginning in June 2002.

51. Many people arriving in Cambodia have been less fortunate. A tripartite agreement on the voluntary repatriation of those at the camps in Mondulkiri and Ratanakiri was signed on 21 January 2002 between Viet Nam, Cambodia and UNHCR. A month later, the Ministry of Foreign Affairs announced that Cambodia and Viet Nam had agreed to bilaterally implement a repatriation process. Between late February and June, the authorities deported several groups of people, without the involvement of UNHCR, without any determination of claims to asylum, and in contravention of the January agreement.

52. On 21 March 2002, Vietnamese authorities, accompanied by armed Cambodian police, transported about 400 people in 12 tour buses from Viet Nam to Mondulkiri to pressure people to return to Viet Nam. Huts were searched and UNHCR staff and refugees manhandled by the delegation. While some of the 400 visitors were relatives of asylum-seekers, about 100 appear to have been Vietnamese officials. The following day, Ruud Lubbers, the United Nations High Commissioner for Refugees, announced the withdrawal of UNHCR from the tripartite agreement and formally terminated its involvement in the repatriation process.

53. The Special Representative has received information about intimidation and threats against individuals who have provided legitimate assistance to Montagnard asylum-seekers. UNHCR staff, and those who have assisted them, have not been immune. On 16 May 2002, for example, a Sam Rainsy Party activist who had provided information to UNHCR about the whereabouts of asylum-seekers was arrested and charged with kidnapping and human trafficking. As of mid-June 2002, this individual, Sok Kry, was being detained in Mondulkiri prison, awaiting trial.

54. The Special Representative appealed to the Government, in a statement on 4 March 2002, to halt forcible deportations and respect its obligations under the 1951 Convention relating to the Status of Refugees,[7] including the core principle of non-refoulement. In a meeting with the Special Representative on 6 June 2002, the Secretary of State at the Ministry of the Interior, Prum Sokha, pledged that Cambodia intended to abide by the principles of this Convention. Unfortunately the reasons why Montagnards are fleeing their land remain the same.

F. Right to education

55. Education is essential key for Cambodia's future. The country's needs in this area are acute. Thirty-six per cent of adults are illiterate. Of the 40 per cent of the population under age 15, many are unlikely to complete schooling for reasons associated with poverty. The Ministry of Education, Youth and Sport, United Nations agencies and non-governmental organizations are making efforts to address these problems, and deserve encouragement; but inadequate funds and slow disbursal are impeding progress.

56. The Constitution guarantees free quality education. In practice, families carry about two thirds of the financial burden of their children's schooling. Teachers receive a basic salary equivalent to US$ 13 per month, which is insufficient and is often paid late. A recently approved pedagogic allowance, which was yet to have been paid in June 2002, will almost double the teaching staff's pay. Families are still charged unofficial fees starting at a few hundred riel a day and rising to several thousand (from approximately US 5 to 75 cents or more) depending on the school and age of the student.

57. This contributes to high dropout rates. Currently, 86 per cent of primary school age children are enrolled in school, but rates fall quickly as they get older. By lower secondary school, only 17 per cent of students enrol. Dropout begins to accelerate from age 10 and is highest at ages 12-14. In 2001, close to 900,000 children between the ages of 12 and 14 did not attend school.

58. Related to this is a shortage of school facilities at all levels of education, particularly in rural and remote areas. In 2001, at primary level, 1,026 villages had no schools, 474 schools suffered extreme overcrowding and 1,119 were unable to offer all primary grades. At secondary level, the problem is worse: one in five districts (subregions of Cambodia's 24 provinces and municipalities) has no lower secondary school. In Ratanakiri, in the country's north-east, just one secondary school exists for the entire province. Higher education is generally available only in Phnom Penh.

59. Unsurprisingly, those who suffer most are the poor. A recent joint survey by the United Nations Educational, Scientific and Cultural Organization (UNESCO),

the United Nations Development Programme (UNDP) and the Ministry of Education, Youth and Sports found that illiteracy is most widespread among people living below the poverty line. The cost of education is often prohibitive for these groups, meaning that children are withdrawn from school and put to work in subsistence farming.

60. Girls face additional hurdles. Constraining social attitudes and rigid ideas about the household division of labour and the value of educating daughters results in a marked gender imbalance. In pre-school education the ratio of girls to boys is more or less equal. But by secondary school, girls represent a third of students, and in post-secondary school just one in five. A recent United Nations Children's Fund (UNICEF)-funded study found that, in addition to cultural attitudes, three factors significantly affect the continued stay of girls in school: the facilities, including classrooms, water and sanitation; the quality of interaction with teachers and other students; and the quality and relevance of both teaching and the curriculum.

61. The children of indigenous minorities, and disabled people, are faced with further challenges. Among children of minority groups, the curriculum and teaching methods are often inappropriate. Language barriers, inflexible timetables, and a scarcity of schools in some minority areas result in low attendance. In Ratanakiri, for example, hill tribes represent 66 per cent of the population but the children of these people represent just 10 per cent of students at the province's sole secondary school. Among the disabled, problems mainly stem from reluctance among parents to educate their children and a shortage of facilities and suitably qualified teachers.

62. Several positive initiatives are being undertaken to address these problems. In June 2002, the Special Representative visited an education programme in the Prey Chhor district of Kompong Cham province that assists girls in particular. This project is run by Kampuchean Action For Primary Education (KAPE) in cooperation with the Ministry of Education, UNICEF and the World Food Programme (WFP). Through enhancement of the curriculum in upper primary school, remedial learning, teaching of life skills, and provision of scholarships for girls entering lower secondary school, it is tackling some of the obstacles to the retention of girls in and after primary school.

63. The Special Representative also visited a school for deaf and blind children, in Phnom Penh, run by the local organization Krousar Thmey. The school provides specialized education to children at the primary level, using textbooks translated into Braille, and sign language. It also provides artistic education, and training to teachers. Most importantly, it integrates students into the State school system by providing follow-up assistance and training for teachers and staff at these schools. This approach deserves praise, as it fosters acceptance of disabled children, engages the public sector and helps overcome prejudice. Similar schools exist in two other provinces, serving about 400 children.

64. Government efforts to improve matters are making some progress, but more is needed. A 2001 Ministry of Education circular abolishing entrance fees for primary and lower secondary education has contributed to an increase in the number of children enrolled in schools. According to Ministry data, 380,000 new students enrolled during the school year starting in September 2001. Recent increases in spending on education (75 billion riel, or US$ 19.3 million, has been allocated under the 2002 national budget) are also welcome. The Special Representative welcomes the establishment of a Disabled Children's Office by the Ministry of Education. A

programme to train teachers and principals in the needs of disabled children, and efforts to encourage the enrolment in school of children with mild and moderate disabilities are also commendable.

65. The Special Representative learned of an ongoing ban on the training of persons with disabilities as teachers, and discussed this problem with the Minister of Education. This exclusion seems to be based on both cultural factors and perceived legal requirements. The Minister informed the Special Representative that the issue was being reviewed by the Ministry in view of the provision of the 1994 Law on the Common Statute of Civil Servants of the Kingdom of Cambodia, requiring candidates for positions as civil servants to satisfy conditions of physical aptitude. The Special Representative welcomes the openness of the Ministry in discussing this issue and encourages the Ministry to approach it in the spirit of inclusiveness that permeates the Education Sector Support Programme. Excluding persons with disabilities that do not impair teaching cannot be justified on human rights grounds, or in light of the practical needs of Cambodia's education system. In addition, disabled teachers can be positive role models for children with disabilities.

66. It is important that funds from Government be disbursed in full and without delay. It took until mid-2002, for example, for money allocated to education under the 2001 budget to be more or less fully received in the provinces. With the 2002 education budget, authorization for disbursement of 50 per cent of funds was given only in June 2002. Efforts to address low salaries for teachers are also behind schedule. The Government's Education Sector Support Programme and the Education Strategic Plan 2001-2005 provide for a doubling of salaries over five years. This needs to be implemented without further delay.

67. The Government and donors are urged to do more to assist the non-formal education sector, which is helping to meet the needs of those who drop out of schools and the adult population that is illiterate. Teachers face many of the same problems with respect to salary, irregular pay and poor training as those in the formal sector. Links with the State education sector should be strengthened to facilitate the reintegration of children, wherever possible. Curricula should also integrate literacy with income-generating skills to support improvements in living standards.

68. The Special Representative welcomes the efforts undertaken to fight corruption in the education system.

69. In the area of education, as in others, close cooperation between the Government, donors and non-governmental organizations is essential.

G. Housing and land

70. Cambodia's poor remain prone to landlessness and involuntary relocation. Private investment and infrastructure development are resulting in both the temporary displacement and permanent relocation of large numbers of people. Squatter communities in urban areas are particularly vulnerable. Although relocation may be unavoidable in some cases, efforts are needed to ensure that those affected are not being further disadvantaged.

71. The adoption of the 2001 Land Law is welcome. This law gives some people who have occupied State land the right to acquire freehold title. People on public

land who cannot acquire title may be granted rights to temporary occupation. In practice, poor communities are unable to access information about such rights and remain vulnerable to involuntary relocation. Efforts should be undertaken to improve public awareness of this law.

72. The informal settlement population in Phnom Penh is estimated at between 180,000 and 200,000 people. Conditions seldom meet acceptable standards, but their location provides poor residents with some benefits including access to work, education and the health facilities of the city. By contrast, the 15 outlying relocation sites into which people have been moved offer few such advantages. The Special Representative notes that conditions at these sites may be below the minimum required for the Government to meet its obligations under the International Covenant on Economic, Social and Cultural Rights.[9] He is also concerned that relocation to some of these areas has come about as a result of a spate of fires in inner-city settlements.

73. In June 2002, the Special Representative visited inner-city sites and the Anlung Krognam relocation area, some 20 kilometres from Phnom Penh. This site accommodates 3,300 families relocated following fires at settlements in the Bassac and Deurm Cham quarters of Phnom Penh in November 2001. At the time of resettlement, the Anlung Krognam site was still undeveloped flood plain. The majority of families have since been given plots of land, but many lack proper shelter. Site drainage, sanitation, water supply, access to education and health facilities and income opportunities are poor. Those who had not received land were squatting under tarpaulins and rice sacks, which provided little protection during the rainy season. Health problems were increasing, and supplies of clean water, food and sanitation were clearly inadequate.

74. The Special Representative raised the issue of the conditions at Anlung Krognam, and the situation of landless families, during a subsequent meeting with Chea Sophara, the Governor of Phnom Penh, and Im Chhun Lim, the Minister of Land Management. He was heartened to learn that the Municipality of Phnom Penh does not support the use of forced evictions and was committed to land sharing and upgrading of existing settlements as an alternative to large-scale relocations. He was also pleased to hear that the Municipality is committed to proper consultation with affected communities. The Governor of Phnom Penh promised that the distribution of plots of lands to the over 600 landless families in Anlung Krognam would begin before the end of June 2002 and that a proper access road to the site would be built by August 2002.

75. More positively, the inhabitants of Preah Monivong, in Phnom Penh, have made considerable efforts to improve their living conditions because they have a legitimate hope of being allowed to stay on the site.

76. In rural areas, "land grabbing" remains a problem. A land titling process, under the 2001 Land Law, is imminent. Unless handled with great care this process could be accompanied by land disputes and forced evictions as land and property values increase. The fragile court system fails to protect against such problems and is open to manipulation, often by individuals connected to the security forces. There is a need for close attention to ensure that land disputes are handled with fairness, particularly when the interests of poor people confront those of powerful individuals.

77. A land rights activist, Keo Van Tout, was jailed in early May 2002 in Kompong Cham province and told by a senior local official that he would face criminal proceedings unless he halted protests and agreed to persuade 191 families to give up all claim to ownership of land leased, over their objections, to a teak growing business in which the United States had invested. While he was in jail, and prior to any hearing to determine guilt, an effort was undertaken to remove him from his position as an elected commune councillor. A representative of the company meanwhile accused him, in the national press, of attempted murder, on the basis of suppositions that police and court officials had dismissed. The Special Representative was disturbed to learn on his visit to Kompong Cham that Keo Van Tout, a member of the Cham Muslim minority — a population with no history of extremism — was also being branded a fundamentalist terrorist. In mid-June 2002, some seven weeks after having been arrested, Keo Van Tout was finally given bail, pending a criminal trial. The Special Representative awaits the outcome of this case with close interest.

78. Finally, the Special Representative would like to express his satisfaction about the happy conclusion of a land case in Bokeo district in the province of Ratanakiri where the expulsion of the inhabitants of three indigenous villages was prevented thanks to the intervention of His Majesty, the King, and the Prime Minister.

IV. Conclusion and recommendations

79. Cambodia provides a convincing illustration of the indivisibility of human rights — civil, political, economic, social and cultural rights. Whatever human rights issue one addresses, one is confronted with fundamental cross-cutting problems such as poverty, corruption and lawlessness. Improvement of the overall situation requires a global strategy and a strong political will. The interests of the people must come first and their suffering must be alleviated. Donors must make sure that the aid they grant really benefits the people and, in the first place, the poorest among them. The Government must understand that aid is a partnership and that donors expect, and are entitled to see, results.

80. Cambodia has come a long way over the past decade. Peace is leading towards stability, and opportunities are opening, to some, for economic betterment. However, negative phenomena, which include corruption, growing poverty, landlessness, political violence and mob violence, are gaining ground. This prevents the rule of law from becoming established, prevents proper fairness in elections, hobbles economic growth in one of the world's poorest countries, and provides opportunity for such crimes as people trafficking, money-laundering, prostitution and the trafficking of small arms and illegal narcotics. All such activities are aided and abetted by the absence of a properly functioning justice system.

Specific recommendations

1. Independence of the judiciary

81. **A determined overhaul should be conducted of rules preventing the growth and development of the judicial system. The Bar Association should change rules that at present restrict entry.**

82. **The statute of judges should be passed into law without further delay. This statute needs to include measures that will reduce opportunity for corruption. It should lay out the conditions of judicial service, establish a tenure system, and provide judges with adequate salaries. The amendment to the Law on the Supreme Council of the Magistracy, and the law on organization and functioni of the adjudicate courts should also be expedited.**

83. **A separate and adequate budget for the justice sector should be allocated, and disbursed in a timely manner. This will ensure the payment of adequate salaries, and provide for day-to-day operational costs of the justice system, including the building and maintenance of proper court facilities.**

84. **Structural reform is required of the Supreme Council of the Magistracy. If this body is to play its intended role in ensuring the independence of the judiciary, it, too, will need to be independent. Its members should not be affiliated to any political party, and a system of checks and balances will be needed to prevent external interference. Article 15 of the Law on Political Parties, which allows judges and prosecutors to play active roles in political parties, needs to be amended.**

2. Election violence

85. **Political parties should be held responsible for ensuring that their members avoid, and are sensitive to the need to avoid, all acts of intimidation. Article 37 of the Law on Civil Servants, which requires government servants to be neutral and prohibits the use of their functions and State materials for servicing political activities, should be strictly enforced.**

86. **Oversight of police military and other State actors should be improved to prevent the involvement of such people in election-related crimes. Evidence of the involvement of police, military and other State actors in crimes should be thoroughly examined.**

87. **The Royal Cambodian Armed Forces should be confined to barracks during election periods. Rules prohibiting the carrying of weapons by off-duty police and military should be strictly enforced, with commanding officers made answerable for breaches. Military commanders should be regularly moved from one region to another.**

88. **Provisions should be made to ensure equitable access to the electronic media for political parties, party leaders and candidates. The role of any body that oversees media issues should be to enable, not disable, freedom of expression.**

3. Mob killings

89. Proper oversight is needed to ensure that police do not instigate or tolerate such attacks, and that properly compiled files on all such cases are passed on to the courts. Incidents where police fail to intervene should be thoroughly investigated and disciplinary or criminal charges brought against individuals where evidence of negligence or other misconduct arises.

90. Provisions of the Code of Conduct for Law Enforcement Officials[7] should be made known to all members of the Cambodian Police Forces and enforced. Articles 2, 5, 6 and 8 of this instrument, which refer to the need for suspects to be protected from ill treatment and for law enforcement officials to prevent violations of the law, are particularly relevant.

91. Prosecutors should reflect on their own shortcomings and ask why police and mobs are allowed to break the law, why they are not prosecuted, and why legal processes are not pursued. Action is needed to ensure that those responsible for acts of mob violence are being dealt with in full accordance with Cambodia's own laws as well as with the international treaties that Cambodia is bound by.

92. An independent board of inquiry, or a body comprising responsible representatives from political parties, non-governmental organizations and religious organizations, should be established as soon as possible to scrutinize police and prosecutorial conduct in all mob killings. This body should have the power to recommend criminal or disciplinary measures. It should also examine why these attacks occur and how to prevent them.

4. Khmer Rouge tribunal

93. The Special Representative recommends the continuation of efforts to seek truth and justice with respect to the crimes of the Khmer Rouge era. A United Nations-supported tribunal would be the best alternative, as it would come closest to assuring adherence to international standards of justice. However, in the absence of such a tribunal, other possibilities for promoting reconciliation should be considered.

5. Montagnards

94. The Government is urged to fully uphold its obligations under the 1951 Convention relating to the Status of Refugees,[2] paying particular attention to the core principle of non-refoulement.

95. Intimidation, arrests and threats against people who have legally assisted those seeking refuge should stop.

6. Education

96. Funds allocated to education under the national budget need to be disbursed in full and in a timely manner. The Government should consider a significant further increase in the budget for education, including making provision for the building of schools in remote areas and improving facilities at existing schools.

97. **Existing plans to raise the salary levels of teachers should be implemented as an urgent priority. This is important for combating the problem of unofficial fees, and enabling the poor to access education, and as a means of attracting more teachers to the profession.**

98. **Measures to address the gender gap in education need to be continued and strengthened. Programmes such as that visited in Kompong Cham province by the Special Representative, with its innovative combination of measures addressing the economic, social and cultural factors that keep girls out of school, provide valuable models in this regard and should be expanded.**

99. **Children of ethnic minorities and indigenous populations require special attention. Efforts should be made to improve access to education with full respect for the cultural specificity and needs of these people, building on the lessons learned from pilot projects providing for bilingual education, flexible timetables and teachers from local communities.**

100. **More attention and resources should be given to non-formal education, to reach the high number of disadvantaged children who drop out or never enrol in school. Links between non-formal education programmes and the formal school system should be strengthened to facilitate reintegration of students whenever possible. Curricula should be adjusted to the needs of the students, and preferably integrate literacy with income-generating/vocational skills to support the improvement of their living standards.**

101. **Efforts should be undertaken to improve the quality of teachers entering the profession. Better training is required in this regard, including the training of teachers to better deal with disabled children.**

102. **The Ministry of Education, Youth and Sports, United Nations agencies, donors and non-governmental organizations should continue to strengthen their efforts to broaden access and improve quality of education.**

7. **Housing**

103. **The Government should adopt the draft resettlement policy to fill the gaps left by the Cambodian Land Law 2001 and ensure that no person is left worse off by relocation.**

104. **Where relocations are necessary, they should not be on undeveloped or unsuitable sites. The Municipality of Phnom Penh should develop a master plan for the urban development of Phnom Penh; and adopt relocation guidelines developed in consultation with non-governmental organizations to ensure that relocations are consistent with human rights standards.**

105. **International financial institutions should be mindful of their special responsibility to ensure that people affected by development projects are not subjected to deprivation of housing and related rights. Strict observance of the international prohibition on forced eviction and effective supervision of existing policies on resettlement are important.**

106. **The Government should ensure that people who have the right to acquire land titles are informed of that right and adequately compensated in the event of relocation.**

107. The Special Representative draws attention to the obligation to protect the right to housing and guarantee an adequate standard of living, which is embodied in article 11 of the International Covenant on Economic, Social and Cultural Rights as interpreted by the Committee on Economic, Social and Cultural Rights in General Comment No. 4 (1991).[10] General Comment No. 7 (1997),[11] dealing with the prohibition of forced eviction, and the Comprehensive Human Rights Guidelines on Development-based Displacement,[12] are also relevant.

108. The Government might seek the assistance of the Special Rapporteur of the Commission on Human Rights on adequate housing as a component of the right to an adequate standard of living.

Notes

1 See *Official Records of the Economic and Social Council, 1993, Supplement No. 3* and corrigenda (E/1993/23 and Corr.2, 3, 4 and 5), chap. II, sect. A.

2 United Nations, *Treaty Series*, vol. 189, No. 2545.

3 A/CONF.183/9.

4 General Assembly resolution 54/263, annex II.

5 General Assembly resolution 44/25, annex.

6 As of 6 June 2002, only one case had reached trial, with the individual responsible being sentenced in absentia.

7 General Assembly resolution 34/169, annex.

8 *Cambodia Daily*, 8-9 and 21 June 2002.

9 See General Assembly resolution 2200 A (XXI), annex.

10 *Official Records of the Economic and Social Council, 1992, Supplement No. 3* and addendum (E/1992/23 and Add.1), annex III.

11 Ibid., *1998, Supplement No. 2* (E/1998/22), annex IV.

12 E/CN.4/Sub.2/1997/7, annex.